

1 GUTRIDE SAFIER LLP  
2 ADAM J. GUTRIDE (State Bar No. 181446)  
3 SETH A. SAFIER (State Bar No. 197427)  
4 KRISTEN SIMPLICIO (State Bar No. 263291)  
5 835 Douglass Street  
6 San Francisco, California 94114  
7 Telephone: (415) 336-6545  
8 Facsimile: (415) 449-6469

9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 RAINBOW BUSINESS SOLUTIONS, D/B/A  
14 PRECISION TUNE AUTO CARE, ET  
15 AL.

16 Plaintiffs,

17 v.

18 MERCHANT SERVICES, INC.; et al.,

19 Defendants.

CASE NO. 10-CV-01993-CW

PLAINTIFFS' MOTION TO SHORTEN  
TIME FOR HEARING OF PLAINTIFF'S  
AMENDED MOTION FOR CLASS  
CERTIFICATION

1 Pursuant to Local Rule 6-3, Plaintiffs respectfully move to shorten time for the hearing on  
2 Plaintiffs' Amended Motion for Class Certification ("Hearing"). Plaintiffs have noticed this  
3 motion for July 25, 2013, but request that the Hearing be held on July 11, 2013.<sup>1</sup> The briefing in  
4 connection with Plaintiffs' motion was completed in February.<sup>2</sup>

5 The Hearing has been rescheduled multiple times. During discovery, the parties  
6 rescheduled it several times in part because of Leasing Defendants intransigence on discovery, as  
7 Plaintiffs had to file four motions to compel against them in the first five months of 2012. In April  
8 2012, the parties set the Hearing for November 8, 2012. [Dkt. 363, 367] Defendants requested  
9 that that Hearing be rescheduled after Plaintiffs sought leave to file a Third Amended Complaint.  
10 At that time, the parties had agreed to mediation. After the first round of mediation was  
11 unsuccessful, on December 6, 2012, this Court set the Hearing for March 7, 2013. [Dkt. # 425]  
12 After the parties scheduled a second mediation session, the Court rescheduled the Hearing for  
13 April 11, and again for May 23, 2013. [Dkt. # 491, 492, 493, 494] While the Plaintiffs and  
14 Merchant Services Defendants eventually reached a settlement, Plaintiffs have been unable to  
15 reach a settlement with the Leasing Defendants and do not believe one is likely before the motion  
16 is heard.

17 No prejudice will befall Leasing Defendants by shortening the time to hold the Hearing.  
18 Plaintiffs' original motion was filed nearly a year ago, and Leasing Defendants have been in  
19 receipt of all of Plaintiffs' papers for months. But further delay will prejudice Plaintiffs. The first  
20 expert discovery deadline is set for September 12, 2013. [Dkt. # 480, 482] A decision on  
21 Plaintiffs' motion is needed so that Plaintiffs can take necessary discovery and work with experts  
22 to prepare reports. Many experts may have limited availability in the summer due to travel, which  
23 may make preparation of those reports difficult. Thus, the sooner the Hearing is held, the sooner  
24

---

25 <sup>1</sup> Alternatively, Plaintiffs propose that the Hearing be held on July 18, 2013.

26 <sup>2</sup> Plaintiffs' Amended Motion for Class Certification and supporting declarations and  
27 exhibits can be found at Docket Nos. 386, 508-513. The Reply in Support and supporting  
28 declarations and exhibits is at Docket Nos. 514-15. Defendants' Opposition and  
supporting declarations and exhibits can be found at Docket Nos. 460-67, and 473.

1 Plaintiffs can begin to make appropriate arrangements. Finally, Plaintiffs have agreed to postpone  
2 this Hearing multiple times and should not be required to undergo further unnecessary delay.

3 Plaintiffs attempted to obtain the consent of the Leasing Defendants prior to filing this  
4 motion, but Leasing Defendants refused. (Declaration of Kristen Simplicio, Ex. 1) On June 18,  
5 Plaintiffs wrote to Leasing Defendants and requested that they stipulate to the July 11, 2013 date.  
6 (Id.) Leasing Defendants declined. (Id.) Plaintiffs asked them to reconsider, and noted that if they  
7 did not, Plaintiffs would file this motion. Leasing Defendants again declined, and refused to  
8 discuss the issue until after this Court ruled on the Motion for Preliminary Approval of the  
9 settlement between Plaintiffs and Merchant Services Defendants.<sup>3</sup> (Id.) That motion may be  
10 resolved by the time this Hearing is held, and even if it is not, in light of the pending deadlines,  
11 Plaintiffs believe that further delay will only cause unnecessary prejudice.

12 Plaintiffs accordingly request that this Court hear their motion on shortened time, as set  
13 forth in their proposed order, submitted herewith.

14 Dated: June 21, 2013

**GUTRIDE SAFIER LLP**

/s/ Kristen G. Simplicio

Adam J. Gutride, Esq.

Seth A. Safier, Esq.

Kristen G. Simplicio, Esq.

835 Douglass Street

San Francisco, California 94114

Attorneys for Plaintiffs

---

26  
27 <sup>3</sup> Plaintiffs also suggested July 18, but Leasing Defendants would not agree to that date  
28 either. (Id.)